

**BRIGHAM CITY PLANNING COMMISSION MEETING
TUESDAY, DECEMBER 02, 2008 – 6:30 PM
BRIGHAM CITY COUNCIL CHAMBERS**

PRESENT:	Joan Peterson	Chairperson
	Barbara Poelman	Vice Chairperson
	Lynda Berry	Commissioner
	Deon Dunn	Commissioner
	Reese Nielsen	Commissioner
ALSO PRESENT:	Ruth Jensen	City Council Liaison
	Mark Bradley	City Planner
	Eliza McGaha	Secretary
EXCUSED:	Paul Fowler	Commissioner
	Roger Handy	Commissioner
	Ruth Jensen	City Council Liaison
	Jared Johnson	Community Development Manager

AGENDA:

WORK SESSION – AGENDA REVIEW

REGULAR MEETING

PLEDGE OF ALLEGIANCE

APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES

PUBLIC COMMENT (*Per Utah Code, will receive input only, no decision can be made*) for items not listed on the agenda.

PUBLIC HEARING ² / APPLICATION #3076 / SUBDIVISION – PRELIMINARY PLAT / 637 EAST 600 SOUTH / REES RICHARDS

CONTINUATION OF APPLICATION #3029 / PRELIMINARY PLAT - KIRK NELSEN 1 LOT SUBDIVISION / 925 WEST 1075 SOUTH (GEORGIA DRIVE) / KIRK NELSEN

DISCUSSION:
UPLAND SQUARE DEVELOPMENT AGREEMENT

REGULAR MEETING:

Joan Peterson opened the regular meeting at 6:30 p.m. Lynda Berry led the Pledge of Allegiance.

APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES:

There were no work session minutes to approve.

MOTION: A motion was made by Barbara Poelman to accept the November 18, 2008 regular meeting minutes. The motion was seconded by Reese Nielsen and passed unanimously.

PUBLIC COMMENT *(Per Utah Code, will receive input only, no decision can be made):*

There was no public comment.

PUBLIC HEARING ² / APPLICATION #3076 / SUBDIVISION – PRELIMINARY PLAT / 637 EAST 600 SOUTH / REES RICHARDS:

Mr. Bradley proceeded with a visual presentation of this application. On lot one they are proposing to create a parcel for a future dwelling. Lot two is the largest parcel with an existing dwelling. Improvements are required along the public right-of-way and the applicant is planning on extending the asphalt, curb, gutter and sidewalk along the frontage of both parcels.

Rees Richards came forward and stated that he is the owner of the property and his brother is going to build a house on lot one. He said he did not see the Staff comments. Mr. Nielsen wanted to make sure there were no miscommunications between the applicant and the City with respect to what actually happens there and the fact that the engineer has recommended to put the curb, gutter and sidewalk in as part of the approval of the subdivision. Mr. Richards said the water and sewer is already in the lot and they had just received the bids on finishing the rest of the road, curb and gutter. He said he talked to Alan Wright about taking the power through the back because he does not want more poles in front of the houses. He said there will be three homes there and they are going to put improvements in front of his son's home also, which will finish most of the block.

MOTION: A motion was made by Reese Nielsen to open the public hearing for application #3076. The motion was seconded by Barbara Poelman and passed unanimously.

There was no public comment.

MOTION: A motion was made by Reese Nielsen to close the public hearing for application #3076. The motion was seconded by Lynda Berry and passed unanimously.

MOTION: A motion was made by Barbara Poelman in regards to application #3076 that it be approved and forwarded to the Land Use Authority, which is the City Planner, under the stipulation that they follow the Staff recommendations with the stipulation that it must comply with Chapter 25 Subdivisions and Chapter 29 Zoning; based on the findings of fact that the applicant will comply with the Staff evaluation and such use will not under the circumstances of the particular case be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and that the application complies with the General Plan. The motion was seconded by Reese Nielsen and passed unanimously.

CONTINUATION OF APPLICATION #3029 / PRELIMINARY PLAT - KIRK NELSEN 1 LOT SUBDIVISION / 925 WEST 1075 SOUTH (GEORGIA DRIVE) / KIRK NELSEN:

Mr. Bradley proceeded with a visual presentation. This item was continued to give Staff time to come up with a conceptual road design and layout to make sure that what the applicant is requesting with the extension of Georgia Drive and with the dedication at that particular location that there will still be adequate room for the future intersection on 1100 South and approximately 1100 West; UDOT requires that to be set back a minimum of 500-feet. The Planning Commission wanted to make sure that would work with this proposed subdivision request.

There are two concept plans, the first one is designed for 30 mph and has a more gentle curve in it and shows what the applicant is requesting. Georgia Drive would tie into the future 1100 West road. The second concept plan is designed for 25 mph and creates a sharper bend in the curvature of the design. Both plans would meet the request of the applicant. Staff prefers the 30 mph concept plan as it is more gentle and actually opens up a better site distance for future development in these areas. The concept is not part of the plat before the Commission for approval at this time but it shows what can be done. The Staff evaluation reflects the changes that need to take place. The applicant may choose to make a request for deferral of improvements.

Ms. Poelman stated that Mr. Kirk Nelsen spoke with her to discuss what his side of the situation was and how he would like to see it projected out.

Trent Clark came forward and stated that Mr. Nelsen asked him to be his representative as he was unable to attend the meeting. Mr. Clark said Mr. Nelsen asked him to portray his intention for the deferral and the reasoning behind that. In 1998 when they built the storage units they were going to do the subdivision but were told they had to put in the road and extend it all the way down to where at that time 1100 West or 1000 West was going to be; they ended up getting the 50-foot turn-around. In looking at the maps presented by Mr. Bradley, extending the road 350-feet would really be putting in a road going no where. The roads are conceptual and the subdivision is not a new development. They are looking at cleaning up ownership which is the reason they want to subdivide. Mr. Clark said they agree that there should be a finished paved road with curb and gutter down there, at such time there is development, but to do it at this time when the development is unknown does not make sense. If it had been done according to the original plan in 1998, it would have been a waste of money as UDOT came back to say they did not want the same situation that exists on 500 West repeated on 1000 West.

As the improvements are not part of this application, Mr. Bradley stated that a written request for deferral of improvements would need to be formally submitted stating how it could be done in the future with the division of property; there is no formal application for deferral, they are usually submitted in the form of a letter. He stated that he thought Mr. Nelsen wanted to proceed with this application at this meeting. He said they could proceed with this application and a deferral could be looked at later or they could be done at the same time. Mr. Clark commented that in the overview it mentions the street would not have to be improved at this time. Mr. Bradley commented that in the evaluation it pointed out that Mr. Nelsen is proposing to dedicate but not improve the street, at this time, which could be considered by the Commission as a deferral request but there would have to be two separate recommendations; the plat to the Land Use Authority and the deferral to the City Council.

Mr. Nielsen asked if the request for deferral was documented or if it was a verbal comment that was implemented into the evaluation. Mr. Bradley replied that to his understanding there was no written document but rather a discussion Mr. Nelsen had over time with the previous City Planner and the Associate Planner. Ms. Poelman said Mr. Nelsen had mentioned to her that that was his intent. Ms. Peterson said she thought they needed a formal request for deferral as the Staff evaluation specified that improvements will be required unless a deferral is requested by the applicant. The maintenance responsibility of an unimproved dedicated road does not lie with the City. Mr. Bradley said he could look that up and bring it back to the Commission at the next work session. Ms. Poelman commented that it made more sense not do anything other than approve the subdivision until something develops with the other property and it would be appropriate to make the change to the road at that time. Mr. Bradley recommended tying the properties to the improvement of that section of road if a deferral is approved.

Mr. Nielsen asked if there was a reason that this had to have a street dedication associated with this subdivision and asked if it could be subdivided without dedicating the rest of that street to the City. Mr. Bradley replied that it is known that the street will go through there and needs to tie in, which is in the transportation master plan and the City would like it to be done at this time. UDOT has set a minimum

requirement for the road of 500-feet and although the conceptual design meets the minimum requirement it is unknown if it will meet the design of the developer who actually develops it. The road will tie into 1100 West in the future. Mr. Nielsen asked what the likelihood of the section of the road that is being dedicated which goes to the end of the storage units will eventually be moved, changed or put somewhere else. Mr. Bradley replied that he could not imagine that it would go out beyond the minimum of UDOT's requirement. Mr. Clark commented that they are meeting the minimum with both conceptual designs which do not impact the current dedication but the dedicated road could possibly be impacted in the future depending on what is developed there. Mr. Bradley stated that it is agreed that what is being proposed does not affect either design but the road will have to be provided when it develops. The placement of a dedicated road can be changed. Ms. Peterson and Ms. Berry were of the opinion to have a formal request for deferral of improvements and address that as well as this subdivision request at the same time.

MOTION: A motion was made by Barbara Poelman to continue application #3076 to the December 16, 2008 meeting pending Mr. Nelsen getting a letter to the City Planner making a formal request to have a deferral on the improvements of the dedicated road. The motion was seconded by Reese Nielsen and passed unanimously.

DISCUSSION:

UPLAND SQUARE DEVELOPMENT AGREEMENT

Staff amended the text in both the Subdivision and Zoning Ordinances to recognize the use of development agreements and allow that tool to be used. The State allows them to be used in municipalities as far as reaching the desired outcome of projects; which can be a benefit to both the developer and the city. This item is scheduled to go before the Joint Advisory Board (JAB) on December 09, 2008. The JAB is comprised of Planning Commissioners from Perry City and Brigham City in regards to the Interlocal Agreement that was established in 2001 for the area along the municipal boundaries of Perry City and Brigham City.

Brigham City Staff met with Perry City Staff to discuss what both cities were looking at with these agreements. Both Cities agreed that it would be best to have both agreements be very similar. Once the agreements are similar, copies will be given to Perry City as well as the applicant to let them know what Brigham City has in mind regarding any changes; it will also need to go through legal review. The agreement will be with Bear River Flats LLC (BRFLLC).

Mr. Bradley read through the agreement. There were some minor grammatical changes made. The agreement uses general legal language, recognizes vested rights, references the streamlined approval process, compliance with current building codes, and the 1100 South Design Guidelines which will become a document attached to the development agreement that the applicant will need to follow. The document also recognizes the coordination with Perry City and includes some proposals for language changes that were discussed with Perry City. The agreement also includes a provision for Brigham City to work closely with BRFLLC and Perry City to provide utility services. Each city feels they can provide their own utility services which could present difficulties and there is language in the document referencing the Interlocal Agreement and states that an agreement can be entered into to work out those details.

Mr. Bradley stated that the intent is to take the development agreement to the JAB, Planning Commission and then to the City Council which at that point the process can be streamlined so every little project does not have to go before the JAB again, because those time constraints could prevent potential businesses from coming in. As projects develop or changes are made, notice will be provided to both cities. The development will run with the land and has a time frame for the project to commence but no termination time.

The phrases 'it shall be deemed to run with the property' and 'running with the land' are part of the legal language that is used but Ms. Berry felt they seemed awkward and commented that there should be more clearly stated terminology to use and asked if those phrases could be worded differently. Mr. Bradley said he would check in to that. In regards to the section pertaining to the developer not building on the property within three years and the City having the option to negate the agreement, allows the City an opportunity to update or upgrade the agreement but Ms. Berry felt that did not have anything to do with the agreement running with the land.

Brian Arnold came forward and explained that the agreement will run with the land no matter who the property owner is and if nothing happens in three years Brigham City can relook at it and decide if they still want to deal with this agreement. Ms. Berry suggested changing the wording in paragraph 9 to read, 'if Bear River has not obtained a building permit to begin construction' and then continue with the part that says 'this agreement shall run with the land'. Paul Larsen explained that the developer currently owns about 120-acres and, if this agreement is adopted, it will become binding between the landowner and the City. The day after the agreement is adopted the property could be sold and the language being proposed means that the agreement will stay with the land, regardless of who the landowner is, and the landowner will be subject to that agreement and bound by it and it will also be recorded against the property. Mr. Larsen also said he sees the term 'shall run with the land' on legal documents all the time. Ms. Berry suggested removing the conjunction 'however' from separating the part of the paragraph that defines the agreement as being binding on the property owner from the part that defines the City's right to terminate the agreement if nothing happens within three years because she felt they did not go together. Mr. Arnold and Mr. Larsen agreed that removing the word 'however' would not harm the City's interest in the agreement. Mr. Bradley said the first paragraph needs to be established up front as it is the whole goal of the development agreement. Mr. Arnold suggested separating those definitions to be 9a and 9b. Everything in the agreement is subject to paragraph 9.

Mr. Arnold clarified that the developer would have to come back and renegotiate after the three year period, the City does not automatically just get rid of the development. The way it is written, it mandates that the City would have to give the developer a written 90-day notice. The City Attorney has met with Staff and has reviewed the document a number of times, and he will need to do a final review. There have been two or three areas that have been identified for recommended modification. A lot of the work is in the attachments and exhibits. Part of the work is coming up with a common set of land use regulations for both the Perry and Brigham City sides of the development.

Mr. Nielsen commented that the format is pretty straight forward but he did have some questions. The design standards are set forth in exhibit D which states a specific date of the design standards and Mr. Nielsen questioned what would happen if Brigham and/or Perry wanted to change something in those standards and how they would go about renegotiating those standards and getting the developer to agree to comply with those changes. Mr. Larsen replied that was the part of the reason the developer wanted this development agreement because it will give them that certainty that, in the middle of negotiations with a user, the design standards will not change. Mr. Nielsen commented that it would be incumbent for both Cities to make sure the design standards are satisfactory and he thought that was something that should be done.

Mr. Nielsen also noted that there are no specific limits in the agreement such as would prevent the applicant from putting nothing but apartment houses in that area or four fast food restaurants all on one corner. Mr. Larsen replied that one of the things that will be coming through with the agreement is an overall master plan for the development. Mr. Nielsen said he thought the agreement needed to address that concern to balance the types of uses that go in that development. He said as the agreement is currently written it is a framework that has all the right parts to it but it needs some flesh on it before it is satisfactory. There have to be some guidelines in there beyond the development of the area as the two cities want that area to be, such as a certain percentage of housing, retail, food, and hotels to prevent that applicant or a successor from putting in whatever they want under the legal

guidelines and taking advantage of both cities. The cities need to have some protection in the agreement in that respect.

Mr. Arnold commented that with the agreement they would be vested in the commercial zoning which would be the guideline and they would not be able to go outside of that. Mr. Nielsen agreed with Mr. Arnold's statement but clarified that within the commercial zoning there is nothing that would prevent the developer from choosing only one use in a commercial zone and filling up the area with only that one use and nothing else just because it is allowed in that zone. He commented that he thought there needed to be something in the agreement that would prevent that from happening and he thought there should be something in there that would provide a certain mix of retail, multifamily housing, and food establishments rather than just leaving it open to anything that is allowed in the zone. There needs to be some limitation and guidance provided in the agreement since they will not have to come back to the cities for additional approvals. Mr. Nielsen continued by saying the agreement needs to provide that sort of guidance between the cities and the developer to preclude one side or the other from being taken advantage of and should be implemented into the agreement prior to it coming back before them before they can recommend approval or disapproval to the City Council. Mr. Larsen commented that they could probably have some discussions with the developer to figure out a framework to do that.

Ms. Poelman asked if they determine what percentages of the development will be housing, restaurants, retail and such. Mr. Arnold replied that they have not done that in the past and what is important to them is vesting the zoning so they can attract retailers. He commented that he thought for their project to be successful it would have to be a mix; they are not looking for one use or a bunch of fast food restaurants. The master plans they have drawn out are a total mix of different uses. Mr. Bradley asked if there was something that could be a reasonable consideration such as saying three fast food establishments to one sit-down type restaurant. Mr. Arnold said that was definitely something that could be looked at. The Planning Commissioners asked Mr. Arnold to address that. He said they would take a look at that. The high density of 30-units per acre for multiple residential is allowed in the General Commercial zone.

Mr. Arnold stated that they are doing other projects similar to this in Payson, Powder Mountain, and St. George. They get it to the point where it is ready to be developed and then they sell off the pads. Mr. Larsen said he has been working with the applicants for a couple of years. He said they have been doing a lot of things in the proposed development area such as dealing with water issues, land assembly and access issues. Since Mr. Larsen has become aware of this and the concept of a development agreements, as he interacts with other cities he asks them about their development agreements and how they were done. The really nice developments are typically done under a development agreement and the ones that are rather blah are probably done under the standard zoning of that community. Mr. Larsen stated that this is an opportunity to get a development that really meets the quality standards that the City is looking for. The Design Guidelines that were developed and adopted for that area are the developer's bible and have been adopted by reference in the development agreement and they will be the design standards for that development without any argument. Mr. Larsen did agree that there was a need to be a little more specific on the range of uses.

Mr. Nielsen asked if this agreement had been patterned after another agreement. Mr. Arnold said that Paul Morris is the person who wrote the agreement and he is also the person who worked on the Lake Park development in West Valley. This agreement is patterned after the Lake Park agreement. Mr. Morris did numerous development agreements when he was the West Valley City Attorney.

Mr. Bradley asked if it would be helpful to show the Planning Commission the conceptual site plan the developer has. Mr. Arnold said they have a rough sketch of this property and they could also bring in other examples of how mixed uses like this have worked. Ms. Peterson said they would like to see those.

Ms. Dunn asked if other development agreements covered the types of things the City would want to come into the area that would not be so redundant to what is already here. Mr. Larsen asked if there were particular developments the Commissioners liked and suggested Staff research the development agreements for those projects. Some suggestions were Jordan Landing, Daybreak, Gateway, and the downtown Ogden development.

Mr. Bradley said they talked with Perry City about taking out of the general commercial zone those uses that would make sense and establishing a list that would actually be a document. There are a lot of uses that are undesirable in the general commercial zone that would actually hurt the Upland Square project. He mentioned that at the previous Planning Commission meeting they discussed updating the general commercial zone which is in progress. As Staff identified uses that would be appropriate for the general commercial zone there were some uses that were proposed to be moved to the industrial area. He said they would like to have a consistent list of uses between the two cities that is actually approved as part of the document rather than having the applicant have to go through two different ordinances to see what is and is not permitted. Mr. Larsen said he would have a draft of that ready for distribution shortly; he has looked through the schedule of uses for both cities and has tried to merge them.

Mr. Nielsen asked if there was a provision for equalization of the fiscal requirements for both cities as to not drive the developer to want to put something in one city versus the other. Mr. Larsen said the sales taxes are identical for both cities; the property taxes may be different and there could be a comparison done on those. Impact fees may be another consideration. Any differences that might exist will probably be small enough that they would not be a deciding factor.

Mr. Bradley pointed out the portions of the agreement explaining the streamlining factor, the metes and bounds process, getting the mylar copy of the subdivision, and the site plan review and approval process. Mr. Arnold said they do not have any concrete ideas as to the use of the high density. Ms. Berry said in regards to 8 of 11, exhibit B, she would like the two center paragraphs looked at to see if there is a reason they are written the way they are. It puts more of a focus on the housing element than commercial they way it is worded which is a concern to Staff. Mr. Arnold said he would look into that and also said as they are already vested in the commercial zone with the agreement they could take that out and be just fine.

MOTION: A motion was made by Barbara Poelman to adjourn. The motion was seconded by Lynda Berry and passed unanimously.

The meeting adjourned at 8:05 p.m.

This certifies that the regular meeting minutes of December 02, 2008 are a true and accurate copy as approved by the Planning Commission on December 16, 2008.

Signed: _____

Jeffery R. Leishman, Secretary